



4-1-3

13 CPA
Group # 2633
27007

Practitioner's Docket No.: 49128 -CPA (70551)

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re prior application of: Y. Ikeda, et al.
Application No.: 09/322,108 Group No. 2633
Filed: May 28, 1999 Examiner: Bello, Agustin
For: DIGITAL OPTICAL COMMUNICATION DEVICE AND METHOD
FOR TRANSMITTING AND RECEIVING DATA WITH LIGHT
EMISSION INTENSITY CONTROLLED

NOTE: "In addition to identifying the application number of the prior application, applicant should furnish in the request for an application under this paragraph the following information relating to the prior application to the best of his or her ability: (i) Title of invention; (ii) Name of applicant(s); and (iii) Correspondence address." 37 C.F.R. § 1.53(d)(8).

Box CPA
Commissioner for Patents
Washington, D.C. 20231

RECEIVED

APR 03 2003

CONTINUED PROSECUTION APPLICATION (CPA) Technology Center 2600

CERTIFICATION UNDER 37 C.F.R. §§ 1.8(a) and 1.10*

(When using Express Mail, the Express Mail label number is **mandatory**;
Express Mail certification is optional.)

I hereby certify that, on the date shown below, this correspondence is being:

MAILING

☒ deposited with the United States Postal Service in an envelope addressed to BOX CPA: Commissioner for Patents, Washington, D.C. 20231.

37 C.F.R. § 1.8(a)

37 C.F.R. § 1.10*

☐ with sufficient postage as first class mail.

☒ as "Express Mail Post Office to Addressee"
Mailing Label No. EL 945989451 US
(mandatory)

TRANSMISSION

☐ transmitted by facsimile to the Patent and Trademark Office.

Date: March 28, 2003

Signature: William J. Daley, Jr.

***WARNING:** Each paper or fee filed by "Express Mail" must have the number of the "Express Mail" mailing label placed thereon prior to mailing. 37 C.F.R. § 1.10(b).
"Since the filing of correspondence under § 1.10 without the Express Mail mailing label thereon is an oversight that can be avoided by the exercise of reasonable care, requests for waiver of this requirement will not be granted on petition." Notice of Oct. 24, 1996, 60 Fed. Reg. 56,439, at 56,442.

(37 C.F.R. § 1.53(d))

NOTE: *A continued prosecution application can only be used to file a divisional or continuation of a prior nonprovisional application and can NOT be used to file a continuation-in-part application. 37 C.F.R. § 1.53(d)(1).*

WARNING: *While facsimile transmission can be used to obtain a date of transmission for this correspondence the date on the certificate of transmission (§ 1.8(a)) of an application under § 1.53(d) (CPA) is not controlling (or even relevant), in that a CPA filed by facsimile transmission will not be accorded a filing date as of the date on the certificate of transmission (§ 1.8(a)) unless Office records indicate, or applicant otherwise establishes pursuant to § 1.6(f), receipt in the Office of the complete application under § 1.53(d) on the date on the certificate of transmission, and that date is not a Saturday, Sunday, or Federal holiday.. 37 C.F.R. § 1.8(b)(3) and 62 Fed. Reg. 53131, 53133, October 10, 1997. Requests for a continued prosecution application filed by facsimile transmission should be clearly marked "Box CPA". 37 C.F.R. § 1.53(d)(9).*

WARNING: *A continued prosecution application "Is a request to expressly abandon the prior application" as of its filing date. 37 C.F.R. § 1.53(d)(2)(v).*

WARNING: *While the filing of a continued prosecution application is the specific reference required by 35 U.S.C. § 120 to every application assigned the application number identified in such request, no amendment in the application may delete the specific reference to any prior application (e.g., for patent term purposes). 37 C.F.R. § 1.53(d)(7).*

Before using the CPA procedure note that a CPA application (§ 1.53(d)) cannot be amended to delete the specific reference to a prior application (e.g., for patent term purposes), as well as the specific reference to any application to which the prior application contains a specific reference under 35 U.S.C. §§ 120, 121 and 365(c) and the expiration date under 35 U.S.C. § 154(b)(2) of any patent issuing from the § 1.53(d) application will be based upon the filing date of the prior application (or the earliest application to which the prior application contains a reference under 35 U.S.C. §§ 120, 121, and 365(c)). 62 Fed. Reg. 53,131, 53,145, October 10, 1997.

WARNING: *A request for an application under § 1.53(d) (CPA) cannot be submitted within papers filed for another purpose (e.g., the filing of a "conditional" request for a continued prosecution application within an amendment after final for the prior application). A "conditional" request for a CPA submitted (as a separate paper) with an amendment after final will be treated as an unconditional request for a CPA. This will result (§ 1.53(d)(2)(v)) in the abandonment of such prior application, and (if so instructed in the request for CPA) the amendment after final in the prior application will be treated as a preliminary amendment in the CPA. 62 Fed. Reg. 53,131, 53,140, October 10, 1997.*

NOTE: *"The filing date of a continued prosecution application is the date on which a request on a separate paper for an application...is filled." 37 C.F.R. § 1.53(d)(2)(emphasis added).*

1. This is a request for a filing of a
- ☐ continuation
 - ☐ divisional
 - ☒ continued prosecution application under 37 C.F.R. § 1.53(d) of the above identified prior nonprovisional application.

It is further requested that this continued prosecution application utilize the file jacket and contents of the prior application, including the specification, drawings and oath or declaration from the prior application, to constitute this new application, and that the application number of the above identified prior application be assigned for identification purposes. 37 C.F.R. § 1.53(d)(2)(iv).

It is also requested that the above-identified prior application be expressly abandoned as of the filing date accorded this continued prosecution application. 37 C.F.R. § 1.53(d)(2)(v).

2. With respect to the above-identified prior nonprovisional application this continued prosecution application is being filed:

- A. ☒ before the earliest of the:
- ☐ termination of the proceedings on the prior application. 37 C.F.R. § 1.53(d)(1)(ii)(C).
 - ☐ payment of the issue fee on the prior application. 37 C.F.R. § 1.53(d)(1)(ii)(A).
 - ☒ abandonment of the prior application. 37 C.F.R. § 1.53(d)(1)(ii)(B).

OR

- B. ☐ after the payment of the issue fee but a petition under § 1.313(b)(5) has been granted in the prior application. 37 C.F.R. § 1.53(d)(1)(ii)(A).

- C. The term for response or taking action in the prior application expires on **August 28, 2003**, Applicants' Response to Final Office Action having been received by the United States Patent and Trademark Office on January 28, 2003.

☐ An extension of time in the prior application is:

- ☐ filed concurrently in the prior application and submitted with this filing.
- ☐ has been filed on _____.

3. It is noted that:

- This application discloses and claims only subject matter disclosed in the prior application. 37 C.F.R. § 1.53(d)(2)(ii).
- Filing of this continued prosecution application is to be construed to include a waiver of confidentiality by the applicant under 35 U.S.C. § 122 to the extent that any member of the public, who is entitled under the provisions of § 1.14 to access to, copies of, or information concerning either the prior application or any continuing application filed under the provisions of 37 C.F.R. § 1.53(d), may be given similar access to, copies of, or similar information concerning the other application or applications in the file jacket. 37 C.F.R. § 1.53(d)(6).
- Filing of this request is the specific reference required by 35 U.S.C. § 120 to every application assigned the application number identified in this request and that no amendment in this application may delete this specific reference to any prior application. 37 C.F.R. §§ 1.53(d)(7) and 1.78(a)(2).

4. This continued prosecution application names as inventors:

- ☒ the same inventors named in the prior application on the date this continued prosecution application under 37 C.F.R. § 1.53(d)(2)(iii) is being filed.

☐ fewer than all the inventors named in the prior application. 37 C.F.R. § 1.53(d)(4).

NOTE: *A CPA application may be filed by fewer than all the inventors named in the prior application, provide the request for an application under 3.7 C.F.R. §1.53(d), when filed, is accompanied by a statement requesting deletion of the name(s) of the person(s) who are not the inventors of the invention being claimed in the new application. 37 C.F.R. § (d)(4).*

☐ please delete the following name(s) as inventor(s), who are not inventor(s) of the invention being claimed in this new application:

NOTE: *"No person may be named as an inventor in an application filed under this paragraph who was not named as an inventor in the prior application on the date the application under this paragraph was filed, except by way of a petition under § 1.48." 37 C.F.R. § 1.53(d)(4).*

NOTE: *A request for an application under § 1.53(d) purporting to name as an inventor a person not named as an inventor in the prior application (even if accompanied by a new declaration/oath under § 1.63 listing that person as an inventor) will be treated as naming the same inventors named in the prior application (§ 1.53(d)(2)(iii)). 62 Fed. Reg. 53,131, 53,141, October 10, 1997.*

☐ Please add the following name(s) as inventors:

☐ A petition under § 1.48 is attached.

5. Amendment

☒ Attached hereto is an amendment to the prior application as it existed prior to the filing of this continuation prosecution application.

☒ Please enter in this CPA application the unentered amendment under 37 C.F.R. Section 1.116 filed in the prior application (copy enclosed) .

NOTE: *"Any new change must be made in the form of an amendment to the prior application as it existed prior to the filing of an application under this paragraph. No amendment in an application under this paragraph (a continued prosecution application) may introduce new matter or matter that would have been new matter in the prior application. Any new specification filed with the request for an application under this paragraph will not be considered part of the original application papers, but will be treated as a substitute specification in accordance with § 1.125." 37 C.F.R. § 1.53(d)(5).*

WARNING: *An amendment after final filed and refused entry in the prior application will not be automatically entered in the CPA and specific instructions to enter amendment(s) refused entry in the prior application must be filed. Q&A 64, "Changes in Patent Practice and Procedure," effective December 1, 1997, supplemented up to February 1, 1998.*

6. Fee Calculation

A. ☒ Regular application (CPA)

CLAIMS AS FILED					
Claims	Number Filed	Basic Fee Allowance	Number Extra	Rate	Basic Fee 37 C.F.R. § 1.16(a) \$740.00
Total Claims (37 C.F.R. § 1.16(c))	12 -	20 = x	x	\$18.00	\$0.00
Independent Claims (37 C.F.R. § 1.16(b))	3	- 3 =	x	\$ 84.00	\$0.00
Multiple Dependent Claim(s), if any (37 C.F.R. § 1.16(d))			+	\$280.00	\$0.00

☐ An Amendment canceling all previous claims and adding new claims is enclosed; fees are calculated based upon the amendment; please charge any excess claim fees unaccounted for to deposit number 04-1105.

Filing Fee Calculation **\$ 750.00**

B. ☐ Design application
(\$310.00--37 C.F.R. § 1.16(f))

Filing Fee Calculation \$_____

C. ☐ Plant application
(\$480.00--37 C.F.R. § 1.16(g))

Filing Fee Calculation \$_____

7. Small Entity Claim

☐ Applicants claim small entity status under 37 C.F.R. §1.27.

Filing Fee Calculation (50% of A, B or C above) \$

7. Fee Payment Being Made at This Time

☐ Not Enclosed

☐ No filing fee is to be paid at this time.

(This and the surcharge required by 37 C.F.R. § 1.16(e) can be paid subsequently.)

☒ Enclosed

☒ Filing fee \$ 750.00

☐ Fee for Extension of Time for Prior Application \$

NOTE: *Payment of a small entity basic filing fee will be treated as a reference to the statements in the prior application that status as a small entity is desired and proper. 37 C.F.R. § 1.28(a)(2).*

☐ Recording assignment
(\$40.00; 37 C.F.R. § 1.21(h))
(See attached "COVER SHEET FOR ASSIGNMENT
ACCOMPANYING NEW APPLICATION.") \$ _____

☐ Petition fee for filing by other than all the
inventors or person on behalf of the inventor
where inventor refused to sign or cannot be reached
(\$130.00; 37 C.F.R. §§ 1.47 and 1.17(i)) \$ _____

Total fees enclosed \$ 750.00

8. Method of Payment of Fees

☒ Check in the amount of \$750.00 to cover filing fee and petition for extension of time is enclosed.

☐ Charge Account No. _____ in the amount of \$ _____.
A duplicate of this transmittal is attached.

NOTE: *Fees should be itemized in such a manner that it is clear for which purpose the fees are paid. 37 C.F.R. § 1.22(b).*

WARNING: *Unless an application under § 1.53(d) filed by facsimile includes an authorization to charge the basic filing fee to a deposit account, the applicant will be given a notification requiring payment of the appropriate filing fee (§ 1.53(d)(3)) and the late filing surcharge under § 1.16(e) to avoid abandonment of the § 1.53(d) application. 62 Fed. Reg. 53,131, 53,133 (Oct. 10, 1997).*

9. Authorization to Charge Additional Fees

WARNING: *If no fees are to be paid on filing, the following items should not be completed.*

WARNING : *Accurately count claims, especially multiple dependent claims, to avoid unexpected high charges, if extra claim charges are authorized.*

☒ The Commissioner is hereby authorized to charge the following additional fees by this paper and during the entire pendency of this application to Account No. 04-1105.

☒ 37 C.F.R. §§ 1.16(a), (f) or (g) (filing fees)

☒ 37 C.F.R. §§ 1.16(b), (c) and (d) (presentation of extra claims)

NOTE: *Because additional fees for excess or multiple dependent claims not paid on filing or on later presentation must only be paid or these claims cancelled by amendment prior to the expiration of the time period set for response by the PTO in any notice of fee deficiency (37 C.F.R. § 1.16(d)), it might be best not to authorize the PTO to charge additional claim fees, except possibly when dealing with amendments after final action.*

☒ 37 C.F.R. § 1.16(e) (surcharge for filing the basic filing fee and/or declaration on a date later than the filing date of the application)

☒ 37 C.F.R. §§ 1.17(a)(1)-(5) (extension fees pursuant to § 1.136(a))

☒ 37 C.F.R. § 1.17 (application processing fees)

WARNING: *"A written request may be submitted in an application that is an authorization to treat any concurrent or future reply, requiring a petition for an extension of time under this paragraph for its timely submission, as incorporating a petition for extension of time for the appropriate length of time. An authorization to charge all required fees, fees under § 1.17, or all required extension of time fees will be treated as a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time under this paragraph for its timely submission. Submission of the fee set forth in § 1.17(a) will also be treated as a constructive petition for an extension of time in any concurrent reply requiring a petition for an extension of time under this paragraph for its timely submission." 37 C.F.R. § 1.136(a)(3).*

☐ 37 C.F.R. § 1.18 (issue fee at or before mailing of Notice of Allowance, pursuant to 37 C.F.R. § 1.311(b))

NOTE: *Where an authorization to charge the issue fee to a deposit account has been filed before the mailing of a Notice of Allowance, the issue fee will be automatically charged to the deposit account at the time of mailing the notice of allowance. 37 C.F.R. § 1.311(b).*

NOTE: *37 C.F.R. § 1.28(b) requires "Notification of any change in status resulting in loss of entitlement to small entity status must be filed in the application . . . prior to paying, or at the time of paying, . . . issue fee." From the wording of 37 C.F.R. § 1.28(b), (a) notification of change of status must be made even if the fee is paid as "other than a small entity" and (b) no notification is required if the change is to another small entity.*

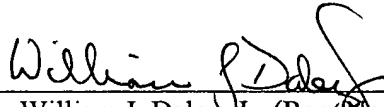
10. Instructions as to Overpayment

NOTE: "Amounts of twenty-five dollars or less will not be returned unless specifically requested within a reasonable time, nor will the payer be notified of such amounts; amounts over twenty-five dollars may be returned by check or, if requested, by credit to a deposit account." 37 C.F.R. § 1.26(a).

☒ Credit Account No. 04-1105
☐ Refund

11. ☐ Additional Document Enclosed:

Date: March 28, 2003



William J. Daley, Jr. (Reg. No. 35,487)
Edwards & Angell, LLP
P.O. Box 9169
Boston, MA 02209
Tel. No.: (617) 439-4444

Customer No. 21,874

BOS2_330705.1